CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON, *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *

Transcript of proceedings before the Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *
Thursday Morning Session
June 26, 2003
9:45 a.m.
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I N D E X

Witness	Page
DONALD B. LOURIA, M.D., M.A.C.P. Cross (By Mr. Bruno)	22568

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Thursday Morning Session
June 26, 2003
9:45 a.m.
* * * * *

P R O C E E D I N G S
* * * * *

(In open court with a jury present:)
9:45 a.m.
THE COURT:
Good morning. You will remind you you are still under oath.
THE WITNESS:
Oh, yes.
THE COURT:
Mr. Bruno, are you ready to begin your cross-examination?
MR. BRUNO:
Yes, Judge. Good morning. Good morning, everybody.

-- -- --

DONALD B. LOURIA, M.D., M.A.C.P.
being previously duly sworn by the Court, testifies and says further as follows:

-- -- --

CROSS-EXAMINATION

BY MR. BRUNO:
Q. Doctor, I hope you got a little rest last night?
A. I did.
Q. Are you doing okay?

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A. I'm doing okay.
Q. All right, good.

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Doctor, maybe can we start with would you consider yourself a problem solver or a critic?
A. Would I consider myself a problem solver or a critic?
Q. Yes.
A. I never really considered myself either.
Q. Okay, that's fair.
Now, Doctor, even though you have never really had a clinical practice, you never really treated patients on a day-to-day basis, and you have not treated cancer patients and COPD patients and heart patients and the like --
MR. WITTMANN:
Objection, Your Honor. Objection, Your Honor.
Q. I wonder if --
MR. WITTMANN:
May we approach?
MR. BRUNO:
For the record, I did not finish my question.
THE COURT:
Gentlemen, approach the bench.
(At sidebar:)
THE COURT:
He's correct, he did not finish the question, but I will allow you to put your objection on the record, Mr. Wittmann.
MR. WITTMANN:
He started out with a speech again. He doesn't ask a question. He's making his argument. He's making statements.

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He's not asking a question.
THE COURT:
Well, he could have done it in a longer fashion by saying: It is correct that you have never treated patients, it is correct that you have never had a clinical practice. And he did it in a speech form. I don't believe it's objectionable at that point.
But please alter your approach a little bit so we don't have an objection to every question, Mr. Bruno. Maybe we will get it down to every other question.
Overruled. Finish your question.
MR. WILLIAMS:
May I be heard quickly, Your Honor?
THE COURT:
You may be heard, Mr. Williams.
MR. WILLIAMS:
It assumes facts not in evidence. Dr. Louria has treated patients.
THE COURT:
Rephrase the question, Mr. Bruno.
(In open court:)
BY MR. BRUNO:
Q. Okay, Doctor, let's break it done. I didn't mean to emphasize this so much, but we will.

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You haven't ever had a clinical practice where you had the primary responsibility for the treatment of patients; right?
A. Not really true.
Q. Okay. Well, I thought you told me yesterday

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that you really didn't have a general clinical practice?

MR. GAY:
Objection, misstates the testimony.
THE COURT:
I didn't hear that, Mr. Gay.
MR. GAY:
Misstates testimony.
THE COURT:
Overruled. Answer the question, if you are able to.
THE WITNESS:
Thank you.

A. What I said was I never had a private practice and that patients -- I did not say this yesterday, but patients I saw, if they were billed, the money went to my department, not to me.
Until 1982 I made clinical rounds on every single day, including Saturday. I would have to sign the charts. I recommended therapy, but I did not write the order for the actual therapy. But I was the one responsible if anything went wrong as the senior person.
So I think what you are saying refers to -- 1982 -- twenty-two years ago, I was age 55. So if you are referring to age 55 to 75, then you are absolutely correct in that time period.
I mean, I still see patients, but only in a consultative role and I don't get paid for it.
Q. Doctor, I have got your testimony from yesterday right in front of me; okay? And what is the question:

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You are not responsible on a day-to-day basis for the medical care of patients; isn't that true?
Your answer is: That's correct.

A. I just answered that. Of course that's true.
Q. That's all -- no big deal here.
And you don't treat on a day-to-day basis people who have heart problems?
You said: Absolutely.

A. Absolutely.
Q. All I'm trying to do is ask this question. Because of that, are you unable to answer questions about what happens in a physician's office today?
A. I would have to see your question. I presume I'm able to, but let's have the question.
Q. All right. That's all I was trying to establish.
Now, when a person goes to the doctor -- goes to the doctor's office, tells the receptionist I'm here, what's the first thing that happens with regard to the interaction between the patient and the doctor?
A. It is so different from office to office and doctor to doctor these days, especially when the

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average time seen in the family practitioner is between six and fifteen minutes.
I can't tell you. I can tell you I know of offices where there is almost no interrelationship. They want to get them in and out and get paid.
And there are others where the interrelationship is very impressive, where the doctor sits down with the patient and gets the

history and does a physical exam and spends a good amount of time.
So it all depends on who the doctor is and what kind of practice and how much you are focused on the money.
Q. Sure. Well, are there things, Dr. Louria, that a physician is required to do in connection with the treatment of patients?
A. I'm sorry, you will have to be more specific. I don't really know what you are saying.
The physician ought to be required to practice good medicine.
Q. Practice good -- well, so there are some things that a physician is required to do. You ought to practice good medicine; right?
MR. GAY:
Objection. Just answered.
A. I think I did just answer that.
THE COURT: There is an objection. And it is overruled.
THE WITNESS:
Sorry.
THE COURT:
So answer the question, please.
A. I did just answer it, but I qualify it only to say exactly -- the term "requirement," it all depends on how you mean it. A legal requirement, an ethical requirement, a medical requirement?
As you probably read in this morning's paper, a report that a lot of doctors were not doing what they were supposed to do.
MR. BRUNO:

Judge? Never mind.
BY MR. BRUNO:
Q. Okay. Isn't it true, Doctor, that the first thing that a physician is required to do is take a history?
A. I think that's a good idea.
Q. Is it a good idea or is it something that's required, good medical practice?
A. It is good medical practice to take a history.
Q. And what kinds of -- what are you doing when you take a history? What information are you trying to get?
A. It depends on the patient's age, gender, risk factors. You are trying to find out about --
I'm sorry, I have to ask you one qualifier. This is a symptomatic patient?
Q. No.
A. They are coming --
Q. It's a patient. Does it matter?
A. Yeah, you have to tell me why they are in the

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doctor's office, then I'll tell you.
Q. Okay, I'll tell you why I'm in the doctor's office. A very dear personal friend of mine, a mentor of mine, died of cancer, and because of his death and because of my age relative to his age, I wanted to go to the doctor myself to see whatever I could see because his death had such a major impact on me.
Okay? Do you understand that?
A. Sure.
Q. Is that something that would be out of the

ordinary?
A. I don't think so.
Q. All right. So, now, given that hypothetical situation, would you take a history?
A. You would figure -- it depends on the cancer you are talking about, and then you would see if the person had any symptoms that suggested that he or she might have that cancer.
Q. Okay. So you would ask the -- you would ask me if I had symptoms, wouldn't you?
A. I would.
Q. You would, okay. So the reason for the visit is not the symptomatology in those circumstances; isn't that true?
A. The reason for the visit is not the symptomatology.
Q. And you wouldn't send me home if you had symptoms; right? You wouldn't say, Oh, you have symptoms, you have got to go home. You wouldn't do that, would you?
A. I don't think I would do that.
Q. No, you wouldn't. And based upon my history and either the presence or absence of symptoms, you might recommend some tests; isn't that true?
A. Depending on what cancer you were worried about, I would decide whether you needed a screening test, if there were screening tests available.
If you came in and said, My brother died of pancreatic cancer, I would offer you no screening tests. There are none.
If a woman came in and say, Someone died of cervical cancer, I'm worried about cervical cancer,

the first thing I would say, Are your Pap smears up-to-date? If not, I would recommend a screening Pap smear, of course.
Q. Sure. And if I had symptoms, that would affect your judgment with regard to which tests to order; right?
A. In most cases it would.
Q. Okay.
MR. BRUNO:
Can we call up, please, DDA-2108, which is just the class definition.
MR. WILLIAMS:
No objection.
THE COURT:
You may publish it.
MR. BRUNO:
Can we make the cessation part disappear on this one? Beautiful.

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BY MR. BRUNO:
Q. All right. Now, Doctor, I just gave you a hypothetical patient when I suggested I wanted to find out about cancer in myself. Here is another patient.

MR. BRUNO:
Excuse me, Phil.

BY MR. BRUNO:
Q. This patient wants to know whether or not he or she may be suffering from a disease caused by, contributed to, or exacerbated by the habit of cigarette smoking. Do you understand that?
A. I understand that.
Q. All right. Now, the first thing you would do

is you would make inquiry as to whether or not that person had symptoms; isn't that true?
A. I'm unclear. What are the symptoms they are coming for?
Q. I didn't ask you that, Doctor. Let's go through it one more time.
I said to you the person presents, not like the hypothet, okay, that I just gave you when you said you would ask about the symptoms.
The person presents with this question: I've been hearing all these things on the TV set about cigarette smoking, and now I'm worried about myself. I have come to see you, Doctor, because I want to find out about my health and how it may or may not have been affected by my cigarette smoking.
My simple question to you, Dr. Louria, is this. Would you ask them if they had symptoms?
A. I would start out asking them if they had symptoms.
Q. And you certainly wouldn't send them home if they had symptoms; isn't that true?
A. That's correct.
Q. Thank you.

MR. BRUNO:
We can take that down.

BY MR. BRUNO:
Q. So it's crystal clear from the definition of the patient in considering whether or not we are entitled to these tests, that we have to consider individuals who after the doctor listens to what they have got to say may have symptoms; isn't that true?

A. Obviously any patient with symptoms will be reacted to. If they don't have symptoms, then it's a question of their coming because they are worried and they are smokers and they are members of the class. Then it's a question of what screening tests you might offer them, and the remedy being proposed for screening tests is --

MR. BRUNO:
Move to strike, Your Honor.

MR. GAY:
Objection.

MR. BRUNO:
I move to strike. It's not responsive.

MR. GAY:

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Objection.
THE COURT:
Approach the bench, gentlemen.
(At sidebar:)
MR. BRUNO:
Judge, I apologize for interrupting, but I don't how to handle the rambling.
THE COURT:
I'm going to try to caution him, but I don't think he was outside the purview of the question -- just a moment, please.
I don't think he was outside the purview of the questioning yet. He's probably going to get outside.
I'm going to read his answer back as far as he went, let him finish it, but caution him not to volunteer anything not

called for by the question.
And if you want to read what he said, it's on my screen, you can read it.
MR. BRUNO:
I know, Judge. There is no yes or no in that answer, that I know. And the question called for a yes or no.
THE COURT:
I will tell him to answer yes or no if he's able to, and then he may explain if he wants to.
MR. BRUNO:
I thank you, Judge.
(In open court:)
THE COURT:
Doctor, I'm going to read the question to you, and I'm going to read as much of your answer that you were allowed to give and then we will go from there.
The question is as follows:
So it's crystal clear from the definition of the patient in considering whether or not we are entitled to these tests, that we have to consider individuals who after the doctor listens to what they have got to say may have symptoms. Isn't that true?
You started to answer as follows:
Obviously any patient with symptoms will be reacted to. If they don't have symptoms, then it's a question of their coming because they are worried and they

are smokers and they are members of the class. Then it's a question of what screening test you might offer them, and the remedy being proposed, the screening test is --
Two things I want to tell you.
First of all, if you are able to answer a question with a yes or a no, the rules require that you do so. If you would like to explain your answer after you answer yes or no, you may do so.
If you don't know the answer to the

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question and you don't understand -- or you don't understand the question, just say so.

THE WITNESS:

Right.

THE COURT:

And secondly, I admonish you to please keep your answers germane.

And the question asked calls for a yes or no, and you didn't give one. So I'm going to let you answer it again. I'm going to ask the question again, you can start your answer again.

THE WITNESS:

Good.

THE COURT:

So it's crystal clear from the definition of the patient in considering whether or not we are entitled to these tests, that we have to consider

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individuals who after the doctor listens to what they have got to say may have symptoms; isn't that true?

Do you want me to read it again?

THE WITNESS:

Please, just the last part about whether they have symptoms.

THE COURT:

If you would to, you can read it with me. It's right there.

THE WITNESS:

I can't see it, you will have to --

THE COURT:

So it's crystal clear from the definition of the patient in considering whether or not we are entitled to these tests, that we have to consider individuals who after the doctor listens to what they have got to say may have symptoms; isn't that true?

A. It is true they may have symptoms.

Q. That's not the question. I just want to know if you agree with me now that the class definition in the context of whether we get these tests, we have to include people who may have symptoms?

MR. GAY:

Objection. Calls for a legal conclusion.

THE COURT:

Overruled. Answer the question, if you are able to.

A. No. If they are symptomatic, it would be

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entirely different.

Q. Okay, Doc.

These organizations you talked about yesterday, and there is a laundry list of them, United States Preventative Services Task Force, National Cancer -- you know what I'm talking about. Do you remember these?

A. I do.

Q. Those are consensus organizations; right?

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A. Those are screening organizations that are reasonably authoritative.
Q. Well, they are a whole lot more than screening organizations, Doctor. I mean, come on.
A. That's true, they also offer health promotion.
Q. But they come together and they try to come up with consensus recommendations; right?
A. Based on evidence, yes.
Q. Sure. Now, what I want to understand is what is the effect of these recommendations? If there is a recommendation to do something and a doctor doesn't do it, what does that mean?
A. It means there was a recommendation to do something and the doctor didn't do it.
Q. Well, I mean, does that mean the doctor was guilty of negligence?
MR. GAY:
Objection, relevance.
THE COURT:
Overruled. Answer the question, if you are able to.
A. Under certain circumstances, it could be

cause for malpractice.
Q. Okay. And that gets into this business of standard of care, doesn't it?
A. I guess it's related to some extent.
Q. Well, there are -- there is a -- can we do it this way?
There is a line. Let's call that line the standard of care. And the standard of care, wouldn't you agree, is the minimum that a doctor ought to do for his patient so as to avoid being sued for malpractice? Wouldn't you agree with that?
A. I think that's reasonable.
Q. Okay. And here is our line.
If the doctor does things that are below the line, he's guilty of neglect. He's not giving good medical attention to his patients; right?
A. Under some circumstances.
Q. But there is nothing that prevents a physician from going above the line; isn't that true?
A. If -- you mean if there is evidence for it, is that what you mean?
Q. If there is evidence in that physician's mind that satisfies him or her, yeah.
A. That physician going above the line is at risk only if what he or she does injures, potentially injures the patient or injures the patient. Then that physician is absolutely at risk.
Q. Well, these consensus organizations, they sometimes make recommendations not to do something, don't they?
A. They do.

Q. All right. And that would be a definition of a line -- if they say don't do it and you did it, that would be below the line; right?
A. No, not necessarily.
Q. Okay. So even if a consensus organization says don't do it, it's appropriate in some instances

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to go ahead and do it?
A. No, I didn't say it was appropriate.
Q. Well --
A. I said that it would not be below the line and cause potential malpractice.
So that if the U.S. Preventive Services, as it does, says don't do chest x-rays for lung cancer and you did a chest x-ray, that would not be malpractice. It would be a waste of time and money, but it would not be malpractice.
Q. It would be below the standard of care, wouldn't it?
A. No, I don't think you could say that.
Q. Okay. Because there is some benefit that could be derived?
A. No, no, no.
Q. Well, then --
A. That is not true. That's not true.
The reason they gave chest x-rays a D recommendation, don't do, was because the evidence was that it did not confer any benefit.
Q. Okay.
A. But if a doctor decided to do it, that's not necessarily below the standard of care. All it means is it shouldn't be used for a screening test.
Q. All right. And when an organization, when

these consensus organizations make no recommendation, that is, they don't recommend to do it and they don't recommend not to do it, then the physician is allowed to use his own or her own judgment based upon the evidence whether to do or not do some test or some -- something for the patient; isn't that true?
A. You are talking about individual physicians versus screening policy?
Q. I'm talking about individual physicians. I'm not quite sure I know what screening policy is. But let's just leave it to the individual physicians right now.
A. Sure. Let me have the question again.
Q. Okay. These consensus organizations -- this is the chart, all of them -- if they don't make a recommendation to do and they don't make a recommendation not to do, the physician, he or she, is allowed I guess is the best word to make a determination based on the evidence and their evaluation of the evidence?
A. Well, that's subject to the same problems. A nonrecommendation says that they do not obviously recommend the test. So you can't use it for screening, at least according to them.
And the individual physician -- if the individual physician does it and it hurts the patient, then that physician is open to malpractice.
Q. Okay. So your testimony before this jury is that a recommendation not to do is the same exactly as no recommendation at all?
A. No, that is not my testimony.

My testimony is that if you are going to do a test, a screening test -- because that's what I'm here to testify about -- that a definite

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recommendation not to do is just what it says, very specific, do not do it.

If there is no recommendation, that does not give you license to do it.

Q. What does it give you?

A. It means it should not be used as a screening test until there is a recommendation for it.

Q. So it's the same as a recommendation don't do. The net effect is the same. The physician doesn't order the test. Isn't that true? That's your testimony?

A. Well, if they have considered it and not recommended it, then it is very close to saying we do not recommend it, yeah.

Q. Okay. How about this? It is so close that they are indistinguishable. Can we agree on that?

A. No.

Q. The effect is the same, the doctor does not give the test?

A. The recommendation is different. The result may indeed be the same. And I do believe that, that if there isn't a recommendation, it shouldn't be done.

Q. Okay. So you agree with me the effect is the same?

A. It's close.

Q. Fine, Doc.

Doctor, you sent along with your expert report a list of what you describe as reliance

materials. Do you remember that?

A. I do.

Q. Do you remember an article entitled "Screening for Adult Respiratory Disease" that was published by the American Thoracic Society?

A. By whom?

Q. By -- well, it says "This is an official ATS statement." Can I show it to you?

A. I don't need it. It's their 1983 statement?

Q. It is, there, you've got it. Do you remember it?

A. I remember the article, and I remember the conclusion.

Q. Okay. Why did you cite this article?

A. Because it was in the literature and I thought I was supposed to cite everything that I might want to subsequently refer to so you could see it.

Q. Well, what view does it support?

A. I don't really think it supports anything.

Q. So why is it there?

A. Because I thought you might want -- I might want to refer to it.

Q. Okay. Is it authoritative?

A. It's by a reasonable group.

Q. The American Thoracic Society, is that a reasonable group?

A. It is.

Q. And is it one of these -- isn't it one of these groups that you consider a consensus group?

A. Is that on the list?

Q. I don't know. I didn't even look. Is it?

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MR. SINGLETON:
Yes.
BY MR. BRUNO:
Q. Yeah, it sure is, Doc?
A. Okay.
Q. You believe me? Do you want to see it?
A. I believe you.
Q. So you consider this authoritative; right?
A. I consider it a reasonable group, sure.
Q. Is it reliable?
MR. WILLIAMS:
Objection, Your Honor.
THE COURT:
Do you wish to approach the bench?
MR. WILLIAMS:
Yes, I do, Your Honor.
THE COURT:
You may approach the bench.
(At sidebar:)
MR. WILLIAMS:
Mr. Bruno has an old chart. They objected to our chart with the American Thoracic Society on it, and we were forced to take it off. So that is not the chart --
THE COURT:
It was different.
MR. WILLIAMS:
See, that's the first one, and they objected to the American Thoracic Society, and we were forced to take it off.
THE COURT:

Where is it on here?
MR. BRUNO:
It's right here. He relied on it nonetheless, Judge. That's the question.
MR. WILLIAMS:
No, but he was referring to the chart. They made us redo the chart, and this was the chart that was shown to the jury. And we were forced -- they objected to that, and we were forced to take them off.
THE COURT:
That doesn't prevent him from asking about the society, whether it's reliable, if it's not on your demo. Objection is overruled.
(In open court:)
THE COURT:
Overruled. Answer the question. The question is: Is it reliable?
A. Frequently it is reliable.
In this case specifically, I found it hard to interpret what they said.
Q. Okay. So this is one consensus organization, you really couldn't make sense of the article that you cited as a reference in connection with your own expert report; right?
A. Sure.
Q. Okay. Well, let's see why it might be confusing or difficult for you.

http://legacy.library.ucsf.edu/tid/hwq67a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/qkhl0001

This article makes a distinction between screening and case finding, doesn't it?

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A. Yes. That's what I found difficult.
Q. Right. And what is the difference at least in this article between case finding and screening?
A. They seem to be saying that if somebody went to a pulmonologist's office for symptoms of one sort or another, that you would do a spirometry, and then they say but don't do screening.
And I really think that's a self-contradiction. I don't understand that.
Q. Okay. That's okay, you don't understand. But they obviously had something in their minds when they wrote this article, didn't they?
A. Oh, sure.
Q. And it really is wrong, they didn't talk about symptomatic people. They talked about the fact that when a person goes to see a doctor and asks the doctor to tell them whether or not they have got a condition -- and I will quote, it says: And entirely different relationship exists; that is, different from the screening environment. That's what it says.
A. It does say that.
Q. And in fact, this article recommends spirometry to asymptomatic smokers, doesn't it?
A. It does.
Q. It sure does. And you know what else it recommends in the case finding concept? The use of chest x-rays for lung cancer, doesn't it?
A. Well, if that's 1983 and you say it does. But I would be stunned if it says that beyond that.
This is 1983, the results of the --
Q. Twenty years ago.

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A. -- control trials were just being published.
If you can show me that the American Thoracic says it now, I would be amazed.
Q. Well, may I read this to you?
A. Go ahead.
Q. I don't want you to think I'm pulling this rabbit out of a hat.

MR. WILLIAMS:
Your Honor, may I get an exhibit number?

MR. BRUNO:
I'm sorry, Mr. Williams. This is -- and Judge, I want to offer this. Do I need to put it on the screen to offer it or can I just offer it?

THE COURT:
Just a minute. He wants an exhibit number. Take care of that.

MR. BRUNO:
The exhibit number is 19.04, Jack.

MR. WILLIAMS:
And may the witness have a copy of it?

MR. BRUNO:
Would you like -- I was going to read it to you. Is that okay? Do you trust me?

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THE WITNESS:
Sure.
BY MR. BRUNO:
Q. There is a section called Lung Cancer; all right? And then under the section that says

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Clinical Case Finding, it says:
Although sufficient data have not yet accumulated to recommend population screening for lung cancer, it does not seem appropriate to withhold the only tests capable of detecting presymptomatic bronchogenic carcinoma from individuals who request cancer-related check-ups, especially -- this is the kicker -- patients in the high-risk categories.
It says that, doesn't it?
A. In 1983?
Q. Yes.
A. Yeah. Fortunately we have learned something since 1983, that I would be very interested if you have a document from the same group in the year 2000 that says that.
Q. We will see.
A. We will see.
Q. Now, would you agree with me that in our society today, we have a whole lot more chemicals in the environment than we did, you know, 25, 30, 50 years ago?
A. True.
Q. And particularly when it comes to employees who work in industries which require that they be exposed to chemicals, there is great danger there, isn't there?
A. Some chemicals, yes, some chemicals, no.
Q. Some chemicals cause cancer of the lung; correct?
A. Some chemicals cause cancer of the lung.

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MR. BRUNO:
I apologize. Before I forget, Judge, may I offer and introduce into evidence this article, 19.04?
THE COURT:
The exhibit number is 19.04?
MR. BRUNO:
Yes, Judge.
THE COURT:
Any objection?
MR. WILLIAMS:
As a learned treatise, no objection.
THE COURT:
Well, it's being offered in evidence as an exhibit, Mr. Williams, and I'm soliciting your objection to that offer.
MR. WILLIAMS:
No objection, Your Honor.
THE COURT:
It will be received in evidence.
BY MR. BRUNO:
Q. Workers are exposed to chemicals which cause lung cancer; right?
A. Correct.

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Q. And it is a fact, is it not, that the Occupational Safety and Health Administration today requires employers who expose their employees to cancer-causing chemicals to monitor their health with a chest x-ray; isn't that true?
A. Depending on the chemical, it is true.
Q. It's true, they use chest x-rays.
Now, is it also true that the Occupational

Safety and Health Administration takes an entirely different approach from you on the question of the evidence?
A. I can't answer that.
Q. All right. Well, the Occupational Safety and Health Administration takes the position that you ought to continue to use the chest x-ray until you prove it's dangerous because there is the potential of benefit. Do you disagree with that?
A. We are talking about occupationally-exposed people to chromates, for example?
Q. Well, I want to be specific. The ones that they list --
MR. BRUNO:
And this is the exhibit number,
Judge.
BY MR. BRUNO:
Q. -- 765.01, Exhibit 771.02, wherein they specifically list the chemicals. You know that the Occupational Safety and Health Administration lists which chemicals require the chest x-ray; correct?
A. It does.
Q. Okay. One of them is arsenic, another one is coke emissions; right?
A. The third one is one we published on, chromates.
Q. And would you have any evidence whatsoever to dispute the testimony of a defense witness if that witness said that today some doctors are using helical CTs to look for lung cancers in chemically-exposed workers?
A. Wait a minute. What would I dispute?

Q. Do you have any evidence to dispute that today in this environment, that doctors are using spiral CT to detect chemical-related cancers in the employment environment if that testimony came from one of the defendants' experts in this case?
A. As to whether -- the question is whether they are using it?
Q. Yes. Would you have any evidence to dispute that they are using it?
A. I don't have any evidence either way.
Q. All right. So the Occupational Safety and Health Administration has a view that's dramatically different from yours with regard to the efficacy of chest x-ray as a tool for monitoring the health of individuals exposed to chemicals which cause lung cancer?
MR. WILLIAMS:
Objection, Your Honor.
A. No, I don't think so.
THE COURT:
Just a moment.

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MR. WILLIAMS:
Objection.
THE COURT:
I think he's answered the question. Your objection is moot. Next question, please.
THE WITNESS:
I didn't finish my answer, Judge. I was stopped.
THE COURT:
Well, then I will hear the objection

if you hadn't finished the answer, and the answer is going to be germane to the question.
THE WITNESS:
Of course.
(At sidebar:)
MR. WILLIAMS:
Two things. The Occupational Health and Safety Act is not relevant to this case.
Number two, neither are x-rays. Mr. Bruno has asked some questions on those already, but indepth questioning on those two things are misleading to the jury.
THE COURT:
Overruled.
(In open court:)
THE COURT:
The objection is overruled, so I'm going to read the question to you and then you can begin your answer.
All right. So the Occupational Safety and Health Administration has a view that's dramatically different from yours with regard to the efficacy of chest x-ray as a tool for monitoring the health of individuals exposed to chemicals which cause lung cancer?
A. Yes. The answer is that I don't think it's necessarily diametrically opposed to mine.
Occupational Health and Safety has to monitor

people for occurrence, so they have to look at the frequency of the disease occurring under the circumstances.
That doesn't mean that they are saying that doing a chest x-ray is going to change the course of the cancer or if they have done any studies on it.
Q. Really? Okay. Well, do you know that someone challenged the Occupational Safety and Health Administration as to the efficacy of doing chest x-rays twice a year, and the Occupational Safety and Health Administration evaluated that question. And do you know that in fact they evaluated the evidence on randomized clinical trials? Did you know that?
And I will show it to you, if you like?
A. No.
Q. Okay. And in fact, what they said about the Mayo Lung Project and a Czechoslovakian study was:

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Periodic chest x-rays led to increased detection of early stage disease, increased rates of resectability, and improvements in lung cancer-specific survival.

However, all of these outcomes are subject to lead time and length bias. A reduction in lung cancer-specific mortality, an outcome which is not subject to such biases, was not demonstrated.

So they clearly evaluated the evidence, didn't they?

A. They seem to have come up with the conclusion that it didn't work.

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Q. Well, let's see what they are going to do about it.

So no study to date has compared chest x-ray screening for lung cancer with no screening at all in a retrospective design with adequate follow-up time.

Is that true?

A. Yeah, that may well be true.

Q. Thus, although the efficacy of chest x-rays --

MR. GAY:

Your Honor, exhibit number?

THE COURT:

Speak a little louder so he can hear you, Mr. Gay.

MR. GAY:

The exhibit number?

MR. BRUNO:

The exhibit number is 771.02, the one I just mentioned.

BY MR. BRUNO:

Q. The conclusion:

Thus although the efficacy of chest x-ray screening can be questioned --

Which is your whole point; right? It's questioning it?

A. No, that's not my point.

Q. Okay, fine.

-- no conclusive evidence exists to show that chest radiography screening does not lower lung cancer mortality.

So they have just the opposite view from you.

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They say keep giving it until you show me that it's doing some harm; right?

A. No, I don't think that's what they said.

What they said was that the randomized clinical trial did not show any benefit.

Q. Uh-huh.

A. And there still is a possibility that despite that, somebody could potentially show some benefit.

That is absolutely no different from my point of view. I just would like somebody, if they believe that, to show it.

Q. Okay. So you find you have no quarrel with the Occupational Health Administration using chest x-rays to monitor for lung cancers in chemically-exposed workers; right?

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A. Yes, with explanation: That the monitoring in this circumstance is not screening of asymptomatic people. The monitoring is to see the incidence of occurrence.
Q. Well, I just read it to you, Doc. They talk about screening individuals, don't they?
A. I stick by my answer.
Q. You stick by your answer. Did you study this?
A. No, but you read it to me.
Q. Well, you just gave us a conclusion. When is the first time you even heard of the fact that the Occupational Safety and Health Administration gives chest x-rays?
A. A very long time ago.
Q. Uh-huh. And when did you hear that they were using chest x-rays to screen for lung cancer in

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occupationally-exposed individuals?
A. A long time ago.
Q. Well, did you write any letters to the Occupational Safety and Health Administration saying how horrible this was and they ought not to be doing it?
A. I have already answered that. The main reason, their responsibility is to find out what the occurrence is in various industries, and the goal is once you know that, to reduce the environmental exposure.
It has absolutely nothing to do with what we are talking about at this trial.
Q. Okay.

MR. BRUNO:
Move for introduction, Judge, of exhibits numbered 771.02, 765.02 and 763.02.

THE COURT:
Objection?
MR. WILLIAMS:
One moment, Your Honor.
MR. BRUNO:
Bob, is this a seven?
MR. WARREN:
Let me make sure. 766.
MR. WILLIAMS:
Excuse me, was that 763.02?
MR. BRUNO:
Yes, it's this one.
MR. WILLIAMS:
May we approach, Your Honor?

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THE COURT:
Yes.
MR. BRUNO:
I need the Aberle exhibit.
(At sidebar:)
THE COURT:
This is the list of exhibits I think you are offering now. Am I correct, 761.01 --

MR. BRUNO:
That's a bad number, I apologize.
MR. GAY:

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765?
THE COURT:
771.02?
MR. BRUNO:
Yes.
THE COURT:
765.02?
MR. BRUNO:
Yes.
THE COURT:
763.02?
MR. BRUNO:
Yes, Judge.
THE COURT:
I don't have a copy of 763.02. Which do you object to?
MR. WILLIAMS:
I object to 763.02. The Screening and Surveillance Guides of OSHA have no relevance to this case, and there has been

no appropriate foundation laid by this witness.
MR. LONG:
Which one did you question him about?
MR. BRUNO:
This one.
MR. WILLIAMS:
It's also hearsay, Your Honor.
THE COURT:
What about 765.02?
MR. WILLIAMS:
I didn't have that one.
MR. BRUNO:
This is just the regs.
MR. WILLIAMS:
The regulations in this case related to OSHA are not relevant, and there has been no foundation laid for 765.02.
The same objections to 0771.02, and 0770.02.
THE COURT:
I don't have the last one, and I don't think he offered it.
MR. WILLIAMS:
I thought he did; he named that one. But if he didn't, that's fine. You are not talking about --
MR. BRUNO:
Can I see it?
MR. WILLIAMS:
You named that number.
MR. BRUNO:

I apologize, no. That's a mistake. You are okay. You are wrong. Judge, you have got the right numbers.
THE COURT:
771.02, 765.02 and 763.02. I still don't have 763.02.
MR. BRUNO:
I took it back. You put it right here.

http://legacy.library.ucsf.edu/tid/hwq67a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/qkhl0001

MR. LONG:
Judge, this one.
THE COURT:
771.02.
MR. LONG:
This one, I had not seen the document before. The doctor can look at it.
I object to it because it's hearsay. I assumed from Mr. Bruno's question that it was some finding of OSHA or something.
MR. BRUNO:
It is.
MR. LONG:
But it's a letter, it's a letter written to this doctor.
MR. BRUNO:
By?
MR. LONG:
By a director of compliance programs. It's not an agency finding. It's a letter by somebody there. It's hearsay.
MR. BRUNO:
On the contrary, it is an agency

finding. You have got to read it.
MR. LONG:
Everybody letter written by everybody at a federal agency does not make it an agency finding..
MR. BRUNO:
Oh, no, to the contrary. The reason this is on the web site is because OSHA is telling people that there is a change in the frequency of chest x-rays from biannual to one per year. That's what this is about, and it's giving the explanation as to why they made that ruling. It's clear as a bell.
MR. LONG:
Your Honor, the ruling itself might be a finding of a government agency. But a letter from somebody who works there talking about it is hearsay. It's not a finding of a government agency.
MR. BRUNO:
Your Honor, I ask the Court to take judicial notice of it then. I don't want to play games about whether I have got to go back to get the actual order with the ribbon on it.
MR. LONG:
Playing games? You are the people objecting to the authenticity on every document we have offered in this case.
MR. BRUNO:
You wrote the book on authenticity in

in this case of all your company documents.
THE COURT:
Just a moment. I can only listen to one conversation at a time. Mr. Williams wants to say something.

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MR. WILLIAMS:
Backing up for a moment, OSHA regulations are not relevant, neither are their findings on arsenic or other things.
MR. BRUNO:
Standard interpretations of the regs. This is the rule of law.
THE COURT:
I'm going to have to look at the evidence code and I will rule on them. So at this point I will take the offering and objection under advisement as I did with those two you offered yesterday, and I will rule before this testimony is over.
MR. BRUNO:
Is there any issue that these are not regulations?
MR. LONG:
I haven't even had a chance to look at them.
MR. WILLIAMS:
I don't know.
THE COURT:
Mr. Bruno, I'm going to take the exhibits and rule on them based on the four corners of the exhibits and the

testimony. At this point I will take it under advisement.
MR. BRUNO:
Thank you, Judge.
(In open court:)
BY MR. BRUNO:
Q. Doctor, whatever you call them, the regulations say that when an employee is exposed to a certain level of a certain chemical, if it's a lung cancer carcinogen, they have got to give them a chest x-ray; isn't that true?
A. This is OSHA?
Q. Yes.
A. Yes.
Q. Thank you.
A. The reason -- with explanation: The reason OSHA screens is to find occurrence so they can reduce environmental exposure and therefore potentially prevent occurrence.
Q. So you are telling me that once they find the occurrence of lung cancer, they are not going to do anything about that?
A. No. I just answered that. What they do is when they find that there is an increase in lung cancer say to chromate exposure, they then say to the industry, You have to reduce the amount of chromate exposure so this individual won't get cancer. That is their primary function.
Q. Right. The fact of the matter is that the chest x-ray when it finds the cancer potentially benefits the person with the cancer?
A. No.

Q. It doesn't?
A. No, that is not true.
Q. It doesn't, okay, Doc.

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Now, the Department of Defense has the same rules as the Occupational Safety and Health Administration. That is, the Navy, the Coast Guard, the Army, the Air Force has the same exact set of regulations; isn't that true?

A. I have no idea what any of them do.

Q. Okay.

MR. BRUNO:

Judge, I move for introduction of 766.02, the Occupational Medical Surveillance Manual of the Department of Defense.

THE COURT:

Objection?

MR. WILLIAMS:

Yes, Your Honor. Same objection as to the previously stated OSHA standard: Irrelevance and hearsay.

THE COURT:

I will take the offer under advisement and the objection under advisement.

BY MR. BRUNO:

Q. Now, Doctor, you told us yesterday, you said that in considering the appropriateness or inappropriateness of a test, you had certain yardsticks that you used; right?

A. Yes.

Q. And in the context of cancer, you said the

only yardstick, the only one, was a randomized controlled clinical trial which demonstrated that the test improved death outcomes. That was it?

A. Yes, with explanation.

Q. Right?

A. That as of the present, that is the gold standard and should always be done, and there is no substitute for the randomized controlled trial as of 2000 and 2001, 2002, 2003.

Q. Okay. Well, it's the gold standard. In your 17-point plan, you are recommending mammography at age 40?

A. I am.

Q. And in fact -- and I'm quoting again so you will know, Cancer Screening, it's one of your own exhibits -- interpretations and opinions differ based upon results from worldwide randomized trials.

So there is no definitive randomized controlled trial that demonstrates beyond question that mammography is appropriate, reduces deaths for people age 40 to 49; isn't that true?

A. That is not true.

Q. Is this article wrong? It's your exhibit.

A. I think -- let me see the article, please.

Q. Sure.

MR. BRUNO:

May I approach the witness, Your Honor?

THE COURT:

You may approach the witness.

MR. BRUNO:

If I take these off, I lose my place.

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A. Yeah, Kramer's article.
Q. Did I read it correctly?
A. What did you read?
Q. I read what it says under mammography for 40 to 49-year-olds?
A. Absolutely correct.
Q. I read it correctly?
A. Yes.
Q. Good. Can I have it back. Thanks.
A. Randomized trials, that's what they said.
Q. Yeah. You just told the jury that the gold standard is a randomized clinical controlled trial that establishes beyond question that a test reduces death rates. That's the gold standard; right?
A. If you will leave out the "without question." There are always questions.
With explanation: The randomized clinical trials on age 40 to 49 are all arguments about how impressive the death benefit is.
So we are indeed in -- this controversy about age 40 to 49, it is arguments about the deaths from randomized clinical trials. That is correct.
Q. So Doc, basically with regard to your 17-point plan, you did an end run around the gold standard, didn't you?
A. Absolutely not. I mean, why do you say that?
Q. Because what I read does not say that it proves beyond question that it improves mortalities. I mean, I read it. You told me I read it correctly. You told me I didn't make any mistakes.
MR. WITTMANN:
Objection, Your Honor.

Argumentative.
THE COURT:
The objection is that the witness is not allowed to ask questions of the lawyer.
THE WITNESS:
Sorry.
MR. BRUNO:
I don't mind.
MR. WITTMANN:
I will make that one too, Your Honor.
THE COURT:
That one is sustained.
MR. WITTMANN:
Thank you, Your Honor.
THE COURT:
We are going to take our midmorning recess at this point.
THE WITNESS:
Good point.
THE COURT:
Until five minutes to eleven by the wall clock.
(In open court without a jury present:)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs counsel?

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MR. BRUNO:
No, Judge.

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THE COURT:
Defense counsel?
MR. WITTMANN:
No, Your Honor.
MR. SHOLES:
Yes, Your Honor. A request?
THE COURT:
Mr. Sholes has a request.
MR. SHOLES:
Of Mr. Bruno. Prior to an exhibit being offered in, I think it's inappropriate to show it to the jury.
Mr. Bruno has a habit of saying "This one" and holding it out to the jury, and Your Honor has just taken those exhibits under advisement.
I think it's inappropriate to show an exhibit or place it that close to the jury without it being admitted.
For that reason, I would ask the Court to ask Mr. Bruno, please, just wait until after it's admitted.
MR. RUSS HERMAN:
I would like to respond.
THE COURT:
Well, Mr. Bruno, is rather mobile, and I rather doubt the jurors can read anything on what he seems to be waving in front of them from five feet away.
So I will caution him to be -- to not put unadmitted exhibits in the jury's hands. But I don't think what he's doing

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gives the jurors any insight into what it is.
And he's not paying any attention to me now anyway. I'm not sure I did any good.
Mr. Bruno?
MR. BRUNO:
I'm sorry. Your Honor, yes?
THE COURT:
Don't show unadmitted exhibits to the jury.
MR. BRUNO:
Yes, Your Honor. I will not do that.
THE COURT:
Anything else for the record before we recess? Mr. Williams?
MR. WILLIAMS:
The last exhibit Mr. Bruno is using is GMM-0503, and I used that yesterday and forgot to move for its admission. So I would like to do that now.
THE COURT:
Did he use a different number? Because I didn't write that number down.
MR. GAY:
He didn't say it.
MR. WILLIAMS:

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I don't think he said the number.
MR. BRUNO:
Jack, what are you asking about?
MR. WILLIAMS:
The Kramer article.

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MR. BRUNO:
I didn't get there yet.
MR. WILLIAMS:
That was the last one you were talking about.
MR. BRUNO:
Oh, you didn't move to admit it.
MR. WILLIAMS:
Right. That's what I'm saying.
MR. BRUNO:
Oh, let's move it jointly. I want this in. Man, give me a break.
MR. WILLIAMS:
If he would identify the number before he starts talking about it, it would make things a lot easier.
THE COURT:
Mr. Bruno, give the exhibit number before you start using it when you are questioning the witness.
MR. BRUNO:
Yes.
THE COURT:
Anything else by defense counsel?
MR. SCHNEIDER:
Yes, Judge.
Yesterday I mentioned I wanted to make a proffer in response to Your Honor's ruling that you made --
THE COURT:
Just a minute.
MR. SCHNEIDER:

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Yesterday I mentioned I wanted to make a proffer with respect to Your Honor's ruling concerning the impact of screening on populations and on nonsmokers that Your Honor excluded.
I wanted to make a proffer with respect to that. We can do that now or we can do it at another break, whatever Your Honor's preferences is.
THE COURT:
I will allow Mr. Williams to make the proffer, and he can do it at this point or he can do it later in the day.
MR. WILLIAMS:
We will do it later.
THE COURT:
One lawyer per witness, counsel.
MR. SCHNEIDER:
But I argued the motion, Your Honor. But that's all right. I understand. That's fine.
MR. WILLIAMS:
Not a problem.
MR. SCHNEIDER:

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We will handle it that way.
THE COURT:
We will recess until five minutes to the hour.
(A recess is taken at 10:44 a.m.)
-- -- --

(In open court with a jury present at 11:00 a.m.:)
THE COURT:
Mr. Bruno?
MR. BRUNO:
Yes, Judge. I don't think we got an answer to the last question. And I have to tell you that I'm not sure if you ruled on the objection.
You did rule on the objection of the witness asking me questions. That is clear. But I don't know that you ruled on the other objections.
THE COURT:
The last question I have is:
Because what I read does not say that it proves beyond question that it improves mortalities. I mean, I read it. You told me I read it correctly. You told me I didn't make any mistakes.
At that point Mr. Wittmann objected as argumentative. Is that the question you have reference to, Mr. Bruno?
MR. BRUNO:
Yes, Judge.
THE COURT:
Well, your question was the answer to the witness' question to you: Why do you say that?
So I'm going to strike your answer to the witness' question.
MR. BRUNO:

I got it.
THE COURT:
And you suggest you ask a question of the witness, Mr. Bruno.
BY MR. BRUNO:
Q. Doctor, you agree, do you not, that there is not -- there is not today a gold standard type randomized clinical trial that demonstrates improved mortality for mammography?
A. That is not true. There are multiple randomized controlled trials that show benefit in age 40 to 49 and much bigger benefit age 50 on.
The debate age 40 to 49 is the extent and significance of the benefit showed in randomized controlled trials.
Q. Right, there is a debate. And this is that area we talked about this morning, that the individual doctor has some room to exercise his own judgment on this question; right?
A. Well, yes, with explanation: If you don't offer mammography age 40 to 49 and a woman develops

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breast cancer, you may well be in court.
Q. Well, this book, which you like a whole lot, this Guide to Clinical Preventative Services, which is already in evidence, this does not recommend mammography for women age 40 to 49; isn't that true?
A. It gives it -- you have got the 1996 version?
Q. Yes.
A. It gives it a C recommendation, which is the evidence is not strong enough to recommend it.
Q. So the answer to my question is they don't recommend it; isn't that true?

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A. Yes, but the -- there is an update that we have to read. They still give it an insufficient evidence recommendation. We recommend it and recommend it strongly.
Q. Well, I understand. That's okay. What I'm trying to say is -- what I'm getting at here is there is room for the physician to exercise his judgment based upon a physician's interpretation of the evidence. Isn't that true?
A. Of the randomized controlled trial evidence, that is true.
Q. Okay. Well, let's talk about another plank in your 17-point plan, and that is breast self-examination. Do you recommend that in your 17-point plan?
A. We did.
Q. You did.
A. We did.
Q. Okay. And there is no randomized -- and by the way, you reason you do that is to help detect cancer?
A. The reason you do that is to detect cancer early enough to make a difference, correct.
Q. Okay. And there is no randomized controlled trial that demonstrates that when a woman self-examines her breast, that there are improved death rates?
A. Untrue.
Q. Well, let's see. It's got a 5 rating. Am I reading it incorrectly, your cancer screening article, GMM-0503?
A. Let me see the article, please.

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Q. Sure.
MR. BRUNO:
May I approach, Judge?
THE COURT:
Yes.
MR. BRUNO:
There.
MR. WILLIAMS:
Mr. Bruno, if you would like your copy, I could give the doctor a copy.
MR. BRUNO:
Thank you. I would really appreciate that, Jack.
MR. WILLIAMS:
That's not marked.
MR. BRUNO:
I'm just finding the page.
A. You are correct on that, Mr. Bruno.

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Q. May I switch?
A. Sure, sure.
Q. I apologize, so I can follow along with you.
A. With explanation: There are randomized controlled trials that show benefit. There are two that show benefit and two that show no benefit.
Q. Well, getting back to your gold standard, your yardstick, it's not present for breast self-examination; isn't that true?
A. No, there are four randomized controlled trials. Those are the yardstick. Two of them show benefit for the women, two of them do not.
The best study just published does not show benefit, and because of that we as well as everybody

else who recommended it in the past are rethinking self-breast examination.
Q. Now, let's see. But it's got a 5 here, and 5 according to this article says:
Opinions of authorities based on clinical experience, descriptive studies or reports of expert committees.
That's what it says here in this article; right?
A. Yes, with explanation.
Q. Okay.
A. It doesn't matter. There are four randomized controlled trials.
Q. Let's talk about Pap smears. Pap smears are also intended to detect cancer; right?
A. They are, and they are very effective.
Q. Okay. And there are no randomized controlled trials demonstrating improved death rates?
A. That is correct.
Explanation: This was approved for screening as a routine before it was recognized that randomized controlled trials have to be used in most cases. And here what they used was a dramatic drop in deaths, in deaths in screened women compared to those who were not screened.
But you are correct, there has never been a randomized control trial.
Q. And in your program, you are recommending colon cancer screening should begin at age 50, which is five years older -- I'm sorry, you are recommending screening for colon cancer at age 45 when the medical community says 50; right?

A. Correct, with explanation: And we point out every time we recommend it that we want to start at 45, but the, as you said, the expert community starts at 50. A very minor time line change.
Q. Right. And if we have got our line, you are above the line on that one, wouldn't you say?
A. No, I don't think so.
Q. You are not offering better care?
A. No. Oh, absolutely not. We just made the judgment that we would like to start a bit earlier. No, no, basically the same recommendation.
Q. Fine. Your 17-point plan requires testing blood sugar levels more aggressively than the American Diabetic Association recommends; isn't that true?

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A. Not really. We are doing it every two years. They say -- I don't remember theirs exactly, but it's a very minor difference, if there is any difference. But --
Q. Did you -- I'm sorry, I didn't mean to interrupt?
A. No, I'm finished.
Q. Glucose, you are recommending glucose. And even on your web site you say that's really not -- that's not the standard in the medical community. In fact, you even go on to explain why you do it.
A. No, no, sir, that is not true.
It is true that we recommend it when the U.S. Preventive Services Task Force does not.
It is not true that it is not the standard in the community. The American Heart, for example, absolutely agrees with us.

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And we do disagree with the U.S. Preventative Task Force on that, and we think that we have the outcome evidence that supports us. And their stand published fairly recently interestingly does not include any of those outcome studies.
Q. Am I reading this correctly:
Some experts are convinced detecting diabetes by finding a high glucose level in a person with no symptoms of diabetes and then doing more detailed follow-up studies can result not only in early diagnosis but also in initiation of vigorous treatment.
They say by controlling the blood sugar before there are any symptoms of diabetes, the consequences of diabetes, damage to the kidney, heart, blood vessels and eyes, can be marked lessened.
Health-Full-Life is not convinced there is persuasive evidence -- you are not convinced there is persuasive evidence that documents the notion that the outcome of diabetes is different if the diagnosis is made on routine glucose testing compared to waiting until the symptoms occur and then treating vigorously.
MR. WILLIAMS:
Your Honor, can we find out what's being read? I mean, can the witness have a copy?
BY MR. BRUNO:
Q. I'm reading from your web site. The exhibit

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number is 502.04.
Did I read it incorrectly?
A. Let me see it, please.
Q. Sure.
A. The answer is yes, with explanation: You didn't bother to read the rest of it as to why we do it.
Q. Doc, wait. In fairness to me, Doctor, that wasn't my question.
All I want to know is whether or not on your own web site you acknowledge that there is insufficient evidence, that's all?

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A. No, I do not.
Q. Well, did I read it wrong?
A. You read it right, but you failed to read the next sentence which says: But we still measure the blood glucose level for two reasons.
Q. Oh, I know you do. I agree that you do. I have no problem with that. That's not the question.
MR. WITTMANN:
Objection, Your Honor. The witness is being interrupted in his answer.
MR. BRUNO:
I move to strike the answer.
THE COURT:
Don't interrupt the answer, Mr. Bruno.
Have you finished your answer, Doctor?
THE WITNESS:
No, I haven't.

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MR. BRUNO:
But I have an objection. My objection is --
THE COURT:
Approach the bench, Mr. Bruno, with your objection.
(At sidebar:)
MR. BRUNO:
My objection, Judge, is that he didn't answer the question. He is rambling again, like he's been doing for the past two days.
The question was only this: Don't you on your web site say that the evidence is insufficient, yes or no.
I know he gives the test. That's not an issue. That wasn't part of my question.
MR. WITTMANN:
He said, Yes, with explanation.
THE COURT:
The question --
MR. BRUNO:
No, the explanation has nothing to do with the yes. The question is: Do you on your web site say X or Y?
MR. WILLIAMS:
The Judge is talking.
MR. WITTMANN:
You interrupted the Judge.
THE COURT:
The question that produced the

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objection by you was his telling you he failed to read the next sentence. And I'm going to let him read it in its entirety.
And if you want to go back to where you were before that happened, I will let you do it.
MR. BRUNO:
The reading of the rest of the page is not germane to my question.

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THE COURT:
It's the next sentence, and I'm going to let him do it.
MR. BRUNO:
I would ask you to look at it, Judge. It's not the sentence. Look at the document. It's the next three paragraphs.
This is where I read. I read everything to here, and he wants to read "But" and then this and that.
MR. LONG:
He wants to explain why they do it.
MR. BRUNO:
I don't have a qualm with him doing it. The question was not why they do it. The question was do you on your web site say there is insufficient data.
THE COURT:
Let me review it.
He's rambling on.
MR. WILLIAMS:
He's just reading it.
THE COURT:

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That's for redirect.
MR. LONG:
I think we got where we are, and we can save some time if Mr. Bruno can correct this. He picked up this document and read very quickly a whole bunch of it, and then he says, Did I read it correctly?
Well, the witness doesn't have it.
THE COURT:
I understand that, and that observation is very relevant and well taken.
And Mr. Bruno, if you just turn the intensity down a little bit and it will go a little smoothly.
MR. BRUNO:
I will.
THE COURT:
You need to let your opposition know what you have in your hand when you are reading, and read slower if you want the Court Reporter to get it down accurately.
MR. BRUNO:
Okay.
MR. LONG:
And if he's going to ask the witness whether he read it correctly, the witness needs to read it with him to see.
THE COURT:
Of course.
MR. LONG:

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But I think there was some follow-up questions because he asked, Did I read it correctly, and the witness said, Well, let me see.
THE COURT:
But we are going to stop all that

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because he's volunteering information that's not relevant to the question. We are going to start again.

MR. LONG:

Okay.

THE COURT:

Anything else for the record?

MR. WILLIAMS:

No, Your Honor.

THE COURT:

All right.

(In open court:)

THE COURT:

For the record, Mr. Bruno's objection on technicality is sustained, and I instruct the jury to disregard everything that was said by either Mr. Bruno or the witness after the witness said: The answer is yes with explanation. You didn't bother to read the rest of it as to why we do it.

Next question, Mr. Bruno?

MR. BRUNO:

Thank you, judge.

BY MR. BRUNO:

Q. Doctor, I know you do it; okay? I know that

you have a very good reason for doing it; okay? Is that fair?

A. Go ahead.

Q. Okay. I only want to establish one point. One point. I'm asking you whether or not on your web site you say: Health-Full-Life --

MR. BRUNO:

I'm sorry, I am reading from Document No. 502.04.

BY MR. BRUNO:

Q. Stepping back, I just want to confirm that you are saying here:

Health-Full-Life is not convinced there is persuasive evidence that documents the notion that the outcome of diabetes is different if the diagnosis is made on routine glucose testing compared to waiting until symptoms occur and then treating vigorously.

A. Yes, with explanation: We recommend it because we can prevent 58 percent of the diabetes completely.

Q. That's fine, Doctor. But once again, that's not the question.

I told you, I will give you that you have good reasons for doing it. But you are doing it in face of the fact there is not persuasive evidence. That's what you say?

A. Wrong.

Q. Okay. So this is not correct on your web site?

A. The whole statement is absolutely correct as

written.

Q. Fine.

The New Jersey Medical School itself -- by

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the way, forgive me for jumping back to mammography. But your own medical school says there is insufficient evidence to recommend for or against routine mammography for women aged 40 to 49; right? Do you want me to show this to you?
A. Sure.
MR. BRUNO:
503.04 is the exhibit. May I approach?
THE COURT:
You may approach.
MR. BRUNO:
That's their web site.
A. This does not come from the New Jersey Medical School. This comes actually from -- the library puts this out. It's Informatics. But they do say it.
Q. They say it, they say it.
A. What am I supposed to do?
Q. I don't know, Doc. I have no idea. You are asking me the wrong question.
The bottom line, Doctor, the bottom line is with regard to this business of giving the test or not giving the test, there is room for the individual physician to evaluate the evidence; isn't that true?
A. Yes, with explanation: You have to be specific about what entity you are talking about. There has to be evidence, of course.

Q. All right. Now, with regard to the helical CT, you say there is absolutely no evidence, none, zero, kaput; right?
MR. LONG:
Objection. Vague, Your Honor.
BY MR. BRUNO:
Q. With regard to -- you know we are talking about helical CT; right? And you say there is no evidence.
A. I'm just waiting for the question.
Q. I did give you the question.
THE COURT:
Just a moment. There is an objection by Mr. Long, which is sustained because I don't think the witness understood your question.
Next question, please, Mr. Bruno?
BY MR. BRUNO:
Q. Well, you said it depends on the test, and I was giving you a test. Let's talk about helical CT now. Okay, can we do that?
A. Yes.
Q. All right. Do you have any evidence to dispute the fact that the NIH is spending two hundred million dollars to study the spiral CT?
A. To see -- I do not dispute it, explanation: To see whether it really works and the benefits outweigh the harms, yes.
Q. And yesterday you told us that 90 percent of all lung cancers are caused by cigarette smoking?
A. No, sir, I did not. I said 90 percent of cigarette -- of clinically-apparent cancer, 90

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percent is due to cigarettes in men, and 75 percent in women. I think that's what I said.
Q. Okay. Overall, give me a number. How much lung cancer is caused by cigarettes? Just pick a number. Which one do you like?
MR. GAY:
He just answered.
MR. BRUNO:
Overall. He didn't answer. Men and women.
THE COURT:
Just a moment.
THE WITNESS:
Can I answer?
THE COURT:
Just a moment.
Mr. Gay, if you want to make an objection, say the magic word, "Objection." Then I will know what's in your mind and then I can rule on it.
MR. GAY:
Sorry. Yes, sir.
THE COURT:
The objection is overruled. Answer the question, if you are able to.
A. Overall, it's over 80 percent.
Q. Okay. Would you agree with me that 80 percent of 200 million is 160 million?
A. 80 percent of 200 million is 160 million.
Q. Thank you.
MR. BRUNO:
Call up, please, 484.04.

I'm sorry, I can't call up this number. I'm sorry, Your Honor, may I approach the witness and show him this exhibit?
MR. WILLIAMS:
We weren't provided a copy, Your Honor.
MR. BRUNO:
What? It's on the list. It's the Ochsner Clinic Foundation Research Subject Information Consent Form, which is identical to Dr. Aberle's form.
THE COURT:
What is the problem? You don't have a copy of the exhibit, Mr. Williams?
MR. WILLIAMS:
No, that's correct. It wasn't provided in the cross documents.
MR. BRUNO:
It was provided. I am happy to give him a copy now. It's identical to Dr. Aberle's form, which has been admitted.
THE COURT:
My information is it has been listed, Mr. Williams.
MR. WILLIAMS:
I'm sorry, Your Honor?
THE COURT:
My information is that exhibit has

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been listed.
MR. WILLIAMS:

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No objection, Your Honor.
MR. BRUNO:
I'm sorry, Jack. It's my only copy.
Can I have it back? It's just like the
Aberle form.
MR. WILLIAMS:
You can have it.
MR. BRUNO:
Thanks.
BY MR. BRUNO:
Q. You know, Doctor, that individuals who participate -- well, let me ask you this.
You know that Ochsner is a participant in the study?
A. I read that in somebody's testimony.
Q. Okay.
A. Dr. Sartor, I think.
Q. And your whole issue with spiral CT, you ought not give it because you are going to hurt people; right?
A. No, that is not my whole issue with helical CT. I have multiple issues.
Q. Well, what is the reason why today it should not be given to an individual who wants to find out if they have smoking-related disease?
A. An asymptomatic individual? That's screening.
Q. Sure.
A. Okay. Do you want me to list the reasons?
Q. I want to know why.
A. Yes.
Q. I'm a physician. Just hypothetically, I'm a

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physician. A guy comes to me, says, Dr. Joe, I want to find out if I have a smoking-related lung cancer.
And I say, How old are you, are you smoking? Based upon all of that, I say, Well, you know what, you ought to have a spiral CT; okay?
Now, that's the context. You say, Dr. Joe, you are making a big mistake; right? That's the gravamen of your testimony? I ought not to do that; right?
A. Absolutely.
Q. Now, tell the jury specifically what's the harm?
A. Okay. There are multiple harms.
One, of course, no benefit has been shown in terms of reduction in deaths.
Two, the findings from three studies in Japan about how many are sitting out there guarantees, guarantees that there will be a huge percentage of overdiagnosis in which people will be labeled cancer when they don't have it.
Number three, the false positive rate ranges from a low of 5 percent in one study in Japan to close to 100 percent in the Mayo study with repeated screening.
All of those false positives have to be evaluated. Some of them will have biopsies, some of them will have resections, and occasionally people

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are going to die from it.
The people who have -- fourth, people who have overdiagnosis, according to the Japanese studies, those people will have their cancers removed when it would have been better for them if

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they had never had the cancer discovered because the cancer was not aggressive and was not likely to cause them trouble.
The Japanese studies compel, before any recommendation could be made by an individual physician or a screening group, that we have a randomized controlled trial.
Helical CAT scan is potentially very dangerous, Mr. Bruno.
Q. You didn't tell the jury what the danger is yet. What is the danger? I'm sitting in the office and I'm listening to this and I have heard all your statistics but I don't understand what all that means. What's the danger to me?
MR. WILLIAMS:
Objection.
THE COURT:
Do you wish to approach the bench?
MR. WILLIAMS:
Yes, Your Honor.
(At sidebar:)
MR. WILLIAMS:
The question has been asked and answered. The witness just gave a very detailed answer to Mr. Bruno's specific question. What is the danger to me is repetitive.
THE COURT:
Anything else?
MR. BRUNO:
Judge, that's not the question.
MR. LONG:

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Then Mr. Bruno makes a speech. You didn't tell me this, you didn't tell me that. He answered.
THE COURT:
Overruled.
(In open court:)
THE COURT:
The objection is overruled. Answer this question. What is the danger to me? is the question.
A. In the worst case scenario, the danger is it will kill you.
Q. Okay. So Ochsner Foundation Hospital is killing people?
A. I didn't say that.
Q. You didn't say that?
A. No.
Q. Well, the NIH is spending two hundred million dollars to kill people?
A. No.
Q. No?
A. They are spending two hundred million dollars to find out what the benefits are so they can weigh these benefits against the known, already

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established harm, including death, Mr. Bruno.
Q. Dr. Louria, there are people today getting the spiral CT at Ochsner Foundation Hospital; isn't that true?
A. I have no idea what Ochsner is doing.
Q. You just told me they are in a study?
A. Oh, you mean, as part of the study?
Q. Yes.

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A. I think they ought to be getting it as part of the study. We have to know just how effective this is, because we already know the harms, and the Japanese study suggests there will be a lot of harms.
Q. Right. So the people at Ochsner, they are a bunch of guinea pigs; right?
A. No.
Q. They are not guinea pigs?
A. No.
Q. Well, let me see if I can understand this. They are being offered the spiral CT, which you say might kill them, and there is no benefit. Is there any logic to that?
A. Yes, there is logic to it.
Q. Because they are guinea pigs?
A. No. They are volunteers for a study to determine benefit and relate the benefit to the risk.
Q. So you are telling me that we are going to spend two hundred million dollars, we are going to put them at risk of death, and there is absolutely no evidence whatsoever that would remotely suggest the potential benefit from spiral CT? That's your testimony, isn't it?
A. That is not my testimony. My testimony is --
THE WITNESS:
Explanation?
THE COURT:
Yes.
A. My testimony is that helical CT could turn out to be a very good technology, that we have to have this randomized controlled trial to study it,

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and that we already know that it has a lot of potential problems. So we have to know the benefits outweigh the harms.
Q. In the consent form, Doctor, do you know that it says: You may choose not to participate in this study.
MR. BRUNO:
I'm reading from 484.04.
MR. WILLIAMS:
Could Dr. Louria have a copy?
MR. BRUNO:
If I had another copy. Could I stand over him and read it? Is that what you want me to do?
THE COURT:
If you would allow the witness to look at what you intend to read to him and then take it back, Mr. Bruno, that may work without objection.
MR. BRUNO:
That's fair. The last paragraph.

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BY MR. BRUNO:
Q. Oh, you read it.
A. Just the last paragraph; right?
Q. Yeah. Do you see where it tells them: Other screening options -- other screening -- underline that word screening -- options that you might consider because of your risk factors include the following, and the first one is to be screened with a spiral CT scan of the chest at your own expense.
That's what our two hundred million dollar study is telling the participants, that they, if

they want to, can go get the spiral CT at their own expense. Does it say that?
A. It does.
Q. Is that reckless?
A. No.
Explanation: It is standard for a consent form to give all of the possibilities. So that looks like a standard consent form.
Q. So it's standard language to tell participants you might be putting yourself at risk for death if you go and get this CT at your own expense; right? That's standard?
A. The fact is that there is the risk.
Q. That's the way it is, there is a risk. And that risk is explained in here, isn't it?
A. I don't know.
Q. You don't know? Did the defense lawyers give you a copy of Dr. Aberle's testimony?
A. Yes.
Q. Well, she talked about it.
A. She may be an expert in it. I'm not.
Q. Oh, well, fine.
MR. BRUNO:
Offer into evidence, Judge, the Ochsner Clinic Foundation Research Subject Information and Consent Form, which is Exhibit No. 484.04.
BY MR. BRUNO:
Q. And Doctor, you are aware -- you have an affiliation with Cornell, don't you?
A. No, not that I'm aware of.
Q. You didn't do any work at Cornell?

A. Yes. I was an intern and resident there and then on their faculty until 1969.
Q. Cornell says that current smokers over 50 years of age may benefit from an annual spiral CT, don't they?
A. That's Henschke.
Q. Does Cornell University say that or not?
A. I have no idea what they say. I have no idea who wrote that, but Henschke is at Cornell.
Q. Fine. Did you research, did you go out and do research to determine what the major cancer institutions have to say about this subject in preparation for your testimony?
A. Absolutely not.
Q. You didn't do that?
A. No.
Q. Rosswell Park also recommends spiral CT for early detection of lung cancer. Did you know that?

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A. I did know that. I think they are making a mistake.
Q. They are making a mistake?
A. Yes.
Q. Good.
Columbia University is also recommending spiral CT. They are making a mistake too?
A. They are making a mistake.
Q. Sloan-Kettering Cancer Center is also making a mistake?
A. They are making a mistake.
Q. Because this spiral CT is useless and it's potentially dangerous; right?
A. No, I did not say that. I did not say that.

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Q. Let's break it up. Did you say it's useless?
A. I hope I didn't. Useless?
Q. Yes.
A. At present, we have no evidence of its benefit.
Q. All right. So you are basically coming down from New Jersey to this courtroom in New Orleans, Louisiana, to tell the jury that Dr. Ochsner is -- I'm sorry, Dr. Brooks Emory when he testified -- if he testified that he thought that spiral CT could provide benefit, he's just a flake and he's off the wall; is that right?
MR. WILLIAMS:
Objection, Your Honor.
MR. WITTMANN:
Objection, Your Honor. May I approach?
(At sidebar:)
MR. WITTMANN:
He's again characterizing the testimony of another witness, asking this witness to comment on it.
MR. BRUNO:
No, I did not. I said "If."
THE COURT:
Let him finish and don't interrupt him, Mr. Bruno.
MR. WITTMANN:
It's the same objection I made repeatedly, Mr. Bruno's characterizing the testimony of other witnesses.
THE COURT:

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Whenever prior testimony is repeated, rightly or wrongly, it's going to be objected to as not being accurate.
MR. BRUNO:
I said "If" in my question, Judge.
THE COURT:
Just a moment.
If the question was: If doctors from Ochsner said this, you would disagree? that's going to be okay. But if you attempt to quote testimony, you will get an objection.
MR. BRUNO:
We can look at the question. I said "If he said."

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THE COURT:
It's perceived by advocates on the other side that that's an attempt to quote testimony, Mr. Bruno, I assure you.
Next question, please, Mr. Bruno.
(In open court:)
BY MR. BRUNO:
Q. If Dr. Brooks Emory of the Ochsner Foundation Hospital came into this courtroom and sat in that witness chair where you are and took an oath and swore to tell the truth, and then told this jury that in his professional opinion he believed that spiral CT provides medical benefit to smokers, is it your opinion that he's a quack?
MR. WITTMANN:
Objection, Your Honor. Same objection.

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THE COURT:
Approach the bench.
MR. BRUNO:
Can you all print that, please?
(At sidebar:)
MR. WITTMANN:
Brooks Emory --
THE COURT:
Do you have Dr. Emory's testimony handy?
MR. BRUNO:
I said "If," Judge. I asked it exactly the way you told me to ask it.
MR. WITTMANN:
Brooks Emory gave one CT in his whole life.
MR. BRUNO:
I said "If he testified."
MR. WITTMANN:
You can't suggest that he testified that way in front of the jury.
MR. BRUNO:
He did testify that way.
THE COURT:
We will recess this trial and we will look at Dr. Brook Emory's testimony so I can rule on your objection.
MR. BRUNO:
Judge, you just said if I used the word "If," I said "If." The jury knows what he said or didn't say.
MR. WITTMANN:

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It's suggesting to the jury that Dr. Brooks Emory testified a certain way.
MR. BRUNO:
It's not suggesting that. When I say "If," it means that it's qualified and the jury can make up his own mind as to whether or not he testified to that.
THE COURT:
It's coming very close for you asking one expert to comment on another expert's testimony, and I don't think that's appropriate.

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But I think the question is: Assume that testimony is in the record, would you disagree with that testimony?

MR. BRUNO:

Okay.

THE COURT:

And don't attribute it to Dr. Emory.

MR. WITTMANN:

In our view, that's okay.

THE COURT:

In closing argument you will be able to argue it if you have the backup.

MR. BRUNO:

I know of no rule that says I can't -- you get the "If" question --

THE COURT:

My rule is I'm not going to allow one expert to criticize another expert's testimony. The substance of the question can be asked, and that's what I want you

to do.

MR. WITTMANN:

Also, Judge, this thing about being a quack, I think that's an inappropriate comment about an expert's testimony as well.

MR. BRUNO:

This witness is saying things like useless, ridiculous. I mean, it's absolutely appropriate to ask that question.

THE COURT:

The objection is sustained. Next question, Mr. Bruno.

(In open court:)

BY MR. BRUNO:

Q. If testimony from experts in the case is that spiral CT provides medical benefit for smokers, would your opinion be that the author or proponent of that testimony is a quack?

A. That is not my opinion and I never said that. I just said it does not provide benefit. I will not characterize other doctors without seeing their full testimony.

Q. Well, Doctor, did you not testify in this case as follows at page 22492, line nine:

I regard these four tests as ranging from useless to potentially disastrous to this population.

Did you say that?

A. Absolutely.

Q. All right. That's a pretty strong statement,

isn't it?

A. It is strong, and I believe it, and I think it is correct.

Q. Okay. So anybody that would offer the test would be offering useless and potentially disastrous tests?

A. I think on the basis of the evidence, that is true.

Q. And that would include the people who

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testified in this case, wouldn't it?
A. I won't comment on their testimony without reading it in detail.
Q. That's fine, Doctor.
You also testified yesterday that Dr. Claudia Henschke herself doesn't even believe in the efficacy?
A. I did not.
Q. That's not a true statement, is it?
A. That is not what I testified.
Q. Do we have to get the testimony out again? You said that even she expressed reservations. Didn't you say that?
A. Yes, with explanation: I said that in her 2001 article, the last article specifically about her cohort, she said, quote: Although the evidence or data, I can't remember which, is insufficient. That's what I said.
Q. Well, I guess you didn't read the latest article, did you, from March of 2002, Exhibit No. 42290. Did you read that article, which is entitled "Computed Tomography Screening for Lung Cancer" wherein she says:

Computed tomography scan screening for lung cancer certainly meets all the criteria required for an appropriate screening test.
MR. WITTMANN:
Objection. Could the witness have a copy of what Mr. Bruno is reading from?
MR. BRUNO:
Of course he can. Please look at this article.
I may have given the wrong number for the record.
MR. SHOLES:
Excuse me, Your Honor. The Doctor is trying to get the Court's attention.
THE WITNESS:
I just wanted to say I need that question back.
THE COURT:
Mr. Bruno, are you saying that you gave the wrong exhibit number?
MR. BRUNO:
Yes, apparently I did. Let me correct that for the record before we go any further. The correct exhibit number is 979.02.
THE COURT:
The question is:
Did you read that article, which is entitled "Computed Tomography Screening for Lung Cancer" wherein she says:
Computed tomography scan screening

for lung cancer certainly meets all the criteria required for an appropriate screening test?
A. I read that.
Q. And you never saw that article before?
A. I don't remember. This article is not of new

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data. It just goes over the one in 2001.
Q. Doctor, let me read -- could I read for you what you said yesterday?
A. Yes.
Q. What you said yesterday is this: And what's more --
MR. WILLIAMS:
Page?
MR. BRUNO:
Do we have the page? Can I read it and give you the page after?
MR. WILLIAMS:
We need to see what he's reading, Your Honor.
MR. BRUNO:
Page 22508, Jack, line 14 through 21.
BY MR. BRUNO:
Q. I believe you said the following.
And what's more, every single investigator who has reported helical CAT scans, every single one, even Dr. Henschke, has offered reservations and in essence said this is not ready for general use.
A. Correct.
Q. Okay. That article doesn't say that. She

says it's ready.
A. She does here. She didn't in the other article.
Q. So you are not up-to-date on all the articles, are you?
A. Correct, with explanation: There are no new data in this article. And if she says it's ready, she's wrong.
Q. Whatever. Doc, even the Japanese authors, they say the spiral CT is ready, they recommend it once a year.
A. That is not true.
Q. Not true. Did you read the Taskeke Nawa article?
A. Nawa? Yes, I read Nawa.
MR. BRUNO:
Exhibit No. 994.02.
THE COURT:
994.02.
MR. BRUNO:
Right.
BY MR. BRUNO:
Q. And is it not a fact that the conclusion of this study was:
Low-dose spiral CT seems to be a promising method for screening early lung cancer as part of annual health examinations. Female and nonsmoking subjects should be included in the baseline screening. However, for yearly repeat screenings, the participants may be selected on the basis of gender, smoking

history, and results of the baseline screening?
MR. WITTMANN:

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Objection, Your Honor. May we approach?
(At sidebar:)
MR. WITTMANN:
Your Honor, Mr. Bruno is deliberately disregarding what you told him to do just a few minutes ago.
If he's going to ask the witness if the document says something, put the document before him, offer it in evidence if it's not already in evidence, before he starts reading from it and brandishing it in front of the jury.
MR. BRUNO:
Not only is this in evidence, but this witness commented on this study yesterday, so how can there possibly be any objection?
THE COURT:
Lower your voice, please.
MR. BRUNO:
I'm sorry, Judge.
THE COURT:
Mr. Bruno, one of the things he's objecting to is you are going too fast. You could have said this document was referred to in your testimony yesterday, it's Exhibit No. so-and-so. Pause, give him a copy, and then go on and we wouldn't

be here, Mr. Bruno.
MR. BRUNO:
No, that wasn't his objection.
MR. WITTMANN:
That was my objection.
MR. BRUNO:
That wasn't your objection.
THE COURT:
Well, that basically was the gravamen of the objection. Slow down and do it following that format and you will spend less time walking up here.
Mr. Williams wants to say something.
MR. WILLIAMS:
The document is not on the cross list.
MR. BRUNO:
The document --
THE COURT:
It was used yesterday.
MR. WILLIAMS:
I didn't use it yesterday.
THE COURT:
Well, let's get yesterday's transcript and show me where it was used.
MR. LONG:
You referred to the Japanese studies.
MR. BRUNO:
Jesus.
(In open court:)
BY MR. BRUNO:
Q. Doctor, you did talk about the Japanese

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studies yesterday, did you not?
A. Yes.
Q. And one of the studies you made reference to is the Nawa study?
A. I certainly did.
Q. Do I need to show it to you?
A. Yes, you do.
Q. Okay.
MR. BRUNO:
I'm going to show the witness Scott Exhibit No. 0994.02.
May I approach the witness?
THE COURT:
You may.
BY MR. BRUNO:
Q. And you studied this in detail before you gave your testimony, didn't you?
A. I sure did.
Q. Okay. So you know it backwards and forwards, don't you?
A. I'm sorry, what was your question?
Q. You know it inside-out, backward and forwards, up and down, you know the article?
A. No, wait a minute. I didn't say that.
Q. So the Japanese do recommend spiral CT for smokers on an annual basis; right?
A. No.
Q. Would you read the conclusion outloud? Let's just read it and we will be done with it. Read the conclusion?
A. Low-dose spiral CT seems to be a promising method for screening early lung

cancer as a part of annual examinations. Our project is now in its third cycle, and we hope to accumulate more data in order to determine how often CT screening should be performed and how to select suitable candidates.
Q. Doctor, the conclusion on the front page?
A. No, it says "In conclusion." You read one "In conclusion" and I read another.
Q. You picked the conclusion you wanted, didn't you? How about you reading my conclusion, which is on the front page?
A. I would be delighted.
Q. Thank you. In fairness to the jury, let them hear all the conclusion.
MR. WITTMANN:
Objection to the commentary.
THE COURT:
Overruled.
A. Low-dose spiral CT seems to be a promising method for screening early lung cancer as part of annual health exams. Female and nonsmoking -- nonsmoking subjects should be included in the baseline screening. However, for yearly repeat screening, the participants may be selected on the basis of gender, smoking history, and the results of the baseline screening.
Q. Thank you, Doctor.

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Let's talk about bladder cancer. Yesterday you referred to the American Cancer Society.

May I have that back, please?
A. Sure. You can have both of them.
Q. Thank you.
You said that nobody recommends screening for bladder cancer, absolutely nobody; right?
A. I said -- yes, with explanation. I said none of the major screening groups.
Q. Is the American Cancer Society a major screening group?
A. It certainly is.
Q. Okay.
MR. WILLIAMS:
Can the witness see the document, Your Honor?
THE COURT:
Excuse me?
MR. WILLIAMS:
Can a witness have a copy of what Mr. Bruno has --
MR. BRUNO:
I'm not asking a question about the document.
THE COURT:
Gentlemen, slow down.
If you refer to a document in a question, give the document number, give a copy to the witness.
He had not done that yet, Mr. Williams. When he refers to a document, I think he will do that.
MR. BRUNO:
And I'm not referring to a document.

I'm asking a question.
BY MR. BRUNO:
Q. Isn't it true that the American Cancer Society does have a recommendation for screening for bladder cancer?
A. Clarification: For screening smokers for bladder cancer?
Q. I didn't ask that question, Doctor. The question is real simple: Do they or do they not have a recommendation for screening for bladder cancer?
A. The answer is yes, with explanation. They have it on their web site.
In their annual article, CA: A Journal for Clinicians, they actually do not mention bladder screening when they talk about their cancer screening.
Q. Well, don't they recommend bladder cancer screening for people with high work-related exposure to certain chemicals?
A. The answer is I don't think they specifically say you should do it. I think they say it would be a reasonable thing to consider.
Q. Okay. Well, they don't say don't do it like you said yesterday, do they?
A. What?
Q. Yesterday you said they say don't do it.

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MR. WILLIAMS:
Objection, Your Honor. May we approach?
THE COURT:
Yes.

MR. BRUNO:
Get out the transcript again.
(At sidebar:)
THE COURT:
Mr. Williams?
MR. WILLIAMS:
The objection is it misstates his testimony. He said they don't recommend screening for asymptomatic smokers and former smokers yesterday.
MR. BRUNO:
No.
MR. WILLIAMS:
Let me finish. He didn't say just no screening for anybody. He was never asked that yesterday.
MR. BRUNO:
Yes, he did. I will show it to you, Jack.
MR. WILLIAMS:
He was referring to --
THE COURT:
Refer page and line if you are going to impeach with a prior inconsistent statement.
MR. BRUNO:
I will.
MR. WILLIAMS:
He said it was a D and that was in the context of smokers.
MR. BRUNO:
No, what you did was you misled the

jury, because what you gave the jury was the D, which --
MR. WILLIAMS:
I didn't mislead anybody.
MR. BRUNO:
Yes, you did. What it was was a D recommendation for the whole population. You didn't even get into specific --
THE COURT:
Get the question and answer and confront him with it.
MR. WILLIAMS:
That's fine.
(In open court:)

BY MR. BRUNO:

Q. Doctor, do you remember your testimony from yesterday while we are waiting for the transcript?

A. Yes.

Q. Can you tell the jury what a D recommendation is?

A. I beg your pardon?

Q. A D recommendation?

A. A D recommendation is -- in regard to bladder screening?

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Q. Yes.
A. Bladder cancer screening, the D recommendation comes from the U.S. Preventive Services Task Force.
Q. Which, just help me remember, means don't do it?
A. It means don't do it.
Q. Okay. So you did say yesterday don't do it;

right?
A. I did indeed.
Q. Now, what you didn't tell the jury was that the D recommendation was for the population at large, not for individuals at high risk, did you?
A. That's not true. The D recommendation is a general recommendation of don't do it. In regard to smokers, it is a D recommendation.
Q. Let me show you GMM-504. The American Cancer Society says, does it not --

MR. WILLIAMS:
Your Honor, objection. That's a pending document.

THE COURT:
That's a what?

MR. BRUNO:
That's a what?

MR. WILLIAMS:
Plaintiffs objected to that document yesterday and Your Honor hasn't ruled on it yet.

THE COURT:
I understand that.

MR. BRUNO:
I objected to that? I don't remember.

THE COURT:
There is an objection to the offer of the document in evidence yesterday, which I have taken under advisement. But the document was used in your direct, Mr. Williams.

So if that's an objection, it's overruled.

MR. BRUNO:
And I'm not offering it. I'm asking him a question.

BY MR. BRUNO:
Q. The question is isn't it true that the American Cancer Society recommends bladder cancer screening for people with high work-related exposures?
A. The answer is yes, with explanation. What I said yesterday referred to smokers. And to check this, I called the American Cancer Society April 2nd, talked with Francesca, she said they do not recommend it for smokers.

MR. BRUNO:
Move to strike as hearsay.

THE COURT:
Sustained.

MR. BRUNO:
Thank you.

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BY MR. BRUNO:
Q. Doc, 50 percent of bladder cancers are caused by smoking; true?
A. That is true.
Q. Twenty to twenty-five percent caused by chemicals; true?
A. I'm sorry, I don't know the exact percentages caused by chemicals.
Q. Lower than cigarettes?
A. Absolutely.
Q. Okay. When you smoke cigarettes, you are

exposed to chemicals?
A. Of course.
Q. Of course. So it would not be unreasonable for a physician in New Orleans or in the state of Louisiana to recommend bladder screening for people who have had a lot of smoking exposure?
A. Absolutely incorrect. It would be unreasonable and it would be wrong.
Q. Thank you, Doctor.
Let's just touch on heart disease real, real quick. The fact of the matter is most physicians are using exercise stress testing for risk assessment; isn't that true?
A. No, I don't know that most physicians are.
Q. Did you read the ACC/AHA 2002 Guidelines?
A. I did indeed.
Q. And did you read in the back where -- and by the way, this is Defendant's Exhibit 4752, reading from page 39 -- where it says the use of exercise testing for identification of CAD in asymptomatic patients is a controversial topic --
MR. WILLIAMS:
You are just reading again. We need a copy for the witness.
MR. BRUNO:
Do you need me to give you a copy? You don't think I'm going to read it right?
THE COURT:
See if you have that.
MR. BRUNO:
I was trying to get this done before

lunch. That's all I was trying to do. I apologize.
A. No, I'm okay with it, Mr. Bruno, with the reservation that if I think it's being read out of context, I will ask for it.
Q. And that's totally fair.
Use of exercise testing for identification of CAD in asymptomatic persons is a controversial topic for which the committee had difficulty defining guidelines concordant with widespread current practice.
A. No, I think that's correct.
Q. Of course it's correct.
And it's a 2B, which means a physician can exercise his judgment in regard to administering the test. Isn't that true?
A. No, sir, not the way you stated it. 2B has

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nothing to do with the individual physician. 2B says that there is not very good evidence for it, and right below that they say no for screening. So they say do not do it, not recommending.
Q. Doctor, 2B says and means that a physician can use it if he thinks it's appropriate. It doesn't say don't do it, does it?
A. I think I have answered that. 2B is a recommendation.
Q. Right.
A. And it says it's just weak evidence. It doesn't say anything else.
Q. Right. What's the number for don't do it?
A. The one they give for screening, which is 3.

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Q. The 3, okay.
And if there was testimony in -- if, if, big capital I-F, if there was testimony from an expert who said that you use the cardiac exercise stress test in smokers so that you can more aggressively modify risk factors, okay, to improve the cardiac -- the person's cardiac health, would that be reckless and irresponsible?
A. Clarification: Done once or done as screening?
Q. Done in response to the question that is posed by the class definition.
A. No. The question posed by the class definition is screening, and there is no evidence, and the recommendation is against.
Q. All right. So as long as you can stand behind that screening word, you can say don't do it; right?
A. Yes.
Q. Okay. And if someone -- if another expert comes in this courtroom and says it's not screening, then you wouldn't have any problem with that?
A. No, with explanation. If the physician said I want to do it once in somebody with multiple risk factors, I would say that's a 2B recommendation and it's up to you.
If the same physician said I was going to screen people, period, say smokers, I would say that is not appropriate and the recommendation is do not do it.
Q. And you --
MR. BRUNO:

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You are going to go to lunch.
THE COURT:
We will recess until 1:35.
(In open court without a jury present:)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs counsel?
MR. BRUNO:
No, Your Honor.
THE COURT:
Anything for the record by defense counsel?

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MR. COPLEY:
Yes, Your Honor.
Your Honor, I have an offer of exhibits that I would like to make at this time.
MR. BRUNO:
Forgive me, Steve, I'm sorry, I said nothing. I apologize.
I neglected to offer 994.02, and 502.04, and 503.04, which is the web site.
994.02 is Nawa. Is that all right?
THE COURT:
Mr. Bruno, give me the numbers again.
MR. BRUNO:
994.02, 502.04, 503.04.
Those are web sites, Jack, I think.
MR. WILLIAMS:

Those are his web sites?
THE COURT:
Any objections to 994.02?
MR. WILLIAMS:
No objection to the Nawa article.
THE COURT:
Any objection to 994.02, Mr. Williams?
MR. WILLIAMS:
No objection, Your Honor.
THE COURT:
Any objection to Exhibit 502.04?
MR. WILLIAMS:
One moment, Your Honor.
No objection to -- did Your Honor say 0502.04?
THE COURT:
You can put a zero in front of it which I don't have, 0502.04, yes.
MR. WILLIAMS:
The web site? No objection, Your Honor.
THE COURT:
Any objection to Exhibit 503.04? That one also may have a zero in front.
MR. WILLIAMS:
No objection, Your Honor.
THE COURT:
Those exhibits will be received.
Mr. Copley?
MR. COPLEY:
Yes, Your Honor. Defendants offer

the exhibits that are listed in the document I just handed up, Your Honor, which is entitled Exhibits Offered Into Evidence by Defendants June 26, 2003.
It has attached to it A through F, exhibits offered by defendants, Norrell exhibits, Lorillard Tobacco Company exhibits, PM USA exhibits, Brown & Williamson exhibits, and Reynolds exhibits.
Your Honor, these have been provided to the various plaintiffs counsel that we

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have been working with for a period of time now. Most of them have objections to them and will require hearing by Your Honor.

To the extent that they require hearing, we would ask for those hearings.

Your Honor, I have also handed up at this time a letter from Steve Murray, Jr., that I received last night, June 25th, just handed up.

THE COURT:

I don't have that.

MR. COPLEY:

I handed it up with that.

THE COURT:

I'm sorry, it's behind this.

MR. COPLEY:

June 25th.

Mr. Murray has stated that the plaintiffs have no objection to 88 of

those exhibits that are included in this list, Your Honor. Those 88 documents obviously will not require hearing, and I move those into evidence right now without hearing.

MR. RUSS HERMAN:

Your Honor, I want to check with Mr. Murray about that.

The defendants' coding, of course, is internal to them. They have got numerous prefixes that we don't understand, aren't even trying to understand. We have got to pull all of the documents.

I believe that we have submitted a capsulized objection to their exhibits, both to them and to Your Honor, and it's going to take us some time to pull these documents and the objections.

I would like to reserve the issue of this letter from Mr. Murray until Mr. Murray and I have had an opportunity to discuss it.

MR. COPLEY:

Your Honor, at this time we move for admission all of the exhibits that are listed individually on this June 26th, 2003, document, and ask it be made part of the record, so I don't have to read them all into the record.

MR. RUSS HERMAN:

We object.

MR. COPLEY:

Then I would like to read all of them into the record.

MR. RUSS HERMAN:

We object to the offer of the exhibits until we have had a chance to pull them.

And I believe that we have numerous objections, and your submission has not given us a fair opportunity to look at

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what we object to.
You don't have on those lists which ones we have objected to and the basis of it, and it's going to take some time for us to go through it.
It may be that on your list out of several hundred exhibits, we have no objections to 100 or 150, but I don't know that right now. This comes as a complete surprise to us.
THE COURT:
I will take the offer and the objections under advisement.
MR. RUSS HERMAN:
I also understood that we were to be provided, if you were going to make an offer, at least two days' advance notice.
But as I understand it, this is not in connection with this witness' testimony.
MR. COPLEY:
That's correct.
MR. RUSS HERMAN:

And these are exhibits you provided us previously.
MR. COPLEY:
That's correct.
MR. RUSS HERMAN:
So we don't have any quarrel or objection on that basis.
But we do need some time to go through this list, pull the exhibits, and then match them with our objections.
MR. COPLEY:
I understand that, Your Honor. And I understand that Your Honor will have to conduct hearings on a number of these exhibits.
We have worked with plaintiffs counsel to attempt to resolve the objections, and we will continue to do so.
MR. RUSS HERMAN:
We can do it by stipulation. I think I can get these pulled by Friday afternoon or Saturday morning. I can meet with you Monday afternoon and attempt to resolve these.
If we can do it by stipulation, we are willing to stipulate that evidence in the case as to these documents aren't closed until you have had a fair opportunity to argue them and the Court has had a fair opportunity to rule on them.
MR. COPLEY:

I think that's correct. I think that's what we have in mind.
In fact, Your Honor, I have worked worked with Mr. Redfearn on the Lorillard exhibits, I have worked with Mr. Murray on the exhibits labeled those offered into

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evidence by defendants Exhibit A to the document that I handed up. We have been doing that.

MR. REDFEARN:

Your Honor, all I was going to say, for the Lorillard group, we do have those documents. Those can be argued whenever you are ready.

THE COURT:

I'm going to refer this motion to Special Master Gianna. He will sometime later today call a meeting of counsel on Monday in his office, and I'm going to give him the documents that Mr. Copley gave me and this letter from Mr. Murray, Jr., and I will ask you folks to be ready to discuss the issues and to narrow the issues with Mr. Gianna on Monday.

MR. COPLEY:

One other point, Your Honor.

Exhibit F to the document that I handed you, the first three exhibits on that -- those are documents Reynolds would speak to have admitted. The first three are read-in exhibits that I believe Mr. Wittmann wants to read in today.

So we will have to deal with just those three exhibits today.

MR. RUSS HERMAN:

Do we have copies with yellow lines as to what your reads are?

MR. WITTMANN:

Yes, they have been provided previously.

MR. RUSS HERMAN:

And which three are those?

MR. WITTMANN:

One is the Attorney General's report that's in evidence.

THE COURT:

We will deal with that after lunch.

MR. SHOLES:

And for completeness, Your Honor, to make sure they are aware, we would also like to read in the RFAs today, if there is going to be time to do read-ins. The RFA, Request for Admissions, and interrogatories, which I believe were provided yesterday --

MR. RUSS HERMAN:

I got served with them yesterday. And I don't know of any provision in the Code of Procedure that allows you to read in interrogatory answers. They are no more evidentiary than a deposition. And we do have objections to the request for admissions.

MR. SHOLES:

I think the code might provide a way to do that, Your Honor. We would be happy to argue that this afternoon. Because I

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didn't know I was going to say this right now, so he didn't know it. I would be happy to argue it at the break this afternoon.

THE COURT:

We will hear it after the luncheon recess.

(Whereupon, the hearing recesses at 12:12 p.m.)

REPORTER'S CERTIFICATE

I, NICHOLAS A. MARRONE, CCR, Registered Merit Reporter, do hereby certify that the foregoing proceedings were reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding.

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

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NICHOLAS A. MARRONE (CCR 21011)
CERTIFIED COURT REPORTER
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